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High Court Urged To Protect Foreign Defendant's Right To Federal Forum

(State of Mississippi ex rel. Hood v. AU Optronics Corp.)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court not to allow the Attorney General of Mississippi to deprive out-of-state business defendants of the right to a federal forum simply by filing a *parens patriae* suit in state court.

In a brief filed in *State of Mississippi ex rel. Hood v. AU Optronics Corp.*, WLF argued that out-of-state defendants in interstate cases of national importance ought to be permitted to remove those cases from state to federal court. Congress adopted the Class Action Fairness Act (“CAFA”) in 2005 to ensure that the right of removal is protected for most such defendants, particularly in cases seeking significant damages and in which the plaintiff (as here) is suing to collect for alleged injuries on behalf of numerous individuals. In its brief, WLF expressed concern that remanding such cases to state court will only allow plaintiffs’ lawyers to game the system and avoid removal—the very thing that Congress sought to avoid when it adopted CAFA.

“The Mississippi AG seeks to frustrate the desire of Congress that cases of this sort be removable to federal court as a means of ensuring that out-of-state defendants can have their cases heard in an impartial forum,” said WLF Senior Litigation Counsel Cory Andrews after filing WLF’s brief. “Under these circumstances, allowing the AG to ‘home cook’ these defendants in state court would only serve as a roadmap for plaintiffs’ lawyers seeking to keep their lawsuits out of federal court” Andrews said.

The suit was filed in state court by the Attorney General of Mississippi against 22 multinational corporate entities alleged to have conspired from 1996 to 2006 to fix prices for liquid crystal display (LCD) panels in the international market. The defendants invoked CAFA to remove the case from state court to federal court, but the Attorney General promptly moved to remand the case back to state court. On appeal, the U.S. Court of Appeals for the Fifth Circuit held that CAFA supports removal of the suit to federal court. The Mississippi AG then sought and obtained U.S. Supreme Court review.

The suit is not a conventional “mass action,” as that term is commonly used: the Mississippi Attorney General, suing on behalf of the State of Mississippi, is the only named plaintiff in the lawsuit. But, WLF argued, the suit is functionally equivalent to a standard mass action in that the Attorney General seeks to obtain a recovery for hundreds of Mississippi consumers, identical to the recovery that would be available in a standard mass action. WLF emphasized that Congress intended CAFA to be interpreted broadly and to be applied to cases of this sort so as to permit removal to federal court.

In its brief, WLF argued that protecting out-of-state defendants from the discriminatory treatment it was feared they would suffer in state courts was one of the Framers' primary rationales for establishing a federal court system and creating a right of removal from state court. As a result, depriving foreign defendants of a federal forum in this case is inconsistent with the Framers' understanding of the important roles that diversity jurisdiction and removal jurisdiction were to play in our system of jurisprudence. By retaining jurisdiction over this action, WLF argued, the appeals court decision below vindicates both the design of the Framers and the interests of Congress in enacting CAFA.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending the right of class-action defendants to have their disputes resolved in a federal forum.

For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.